

**United States Department of Labor
Employees' Compensation Appeals Board**

L.S., Appellant

and

**DEPARTMENT OF DEFENSE, ANDREWS AIR
FORCE BASE, MD, Employer**

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**Docket No. 09-740
Issued: October 6, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 22, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 16, 2008 denying his occupational injury claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury causally related to factors of his federal employment.

FACTUAL HISTORY

On July 24, 2008 appellant, a 53-year old firefighter, filed an occupational disease claim (Form CA-2) alleging that he developed severe glaucoma as a result of employment activities. He stated that, during his 25 years as a firefighter, he was exposed to many hazards, including chemical spills, asbestos fumes, fuel and gasses. Appellant indicated that he had 20/20 vision when he became a firefighter.

In a letter dated September 3, 2008, the Office informed appellant that the evidence submitted was insufficient to establish his claim. It advised appellant to submit details regarding the employment duties or exposure he believed caused or contributed to his claimed condition, as well as a comprehensive medical report from a treating physician, which contained symptoms, a diagnosis and an opinion with an explanation as to the cause of his diagnosed condition. In a separate letter dated September 3, 2008, the Office asked the employing establishment to respond to the accuracy of appellant's allegations and to provide any appropriate supportive evidence.

On September 14, 2006 appellant informed the Office that Denise Tice of the employing establishment was in the possession of medical documentation relating to his claim.

By decision dated October 16, 2008, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the events or exposure occurred as alleged and that there was no medical evidence which provided a diagnosis which could be connected to the claimed events.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged,³ and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁵ The medical evidence required to establish a causal relationship, generally, is rationalized

¹ Appellant submitted additional evidence after the Office's October 16, 2008 decision; however, the Board cannot consider such evidence for the first time on appeal. The Board's review of a case shall be limited to the evidence in the case record which was before the Office at the time of its final decision. 20 C.F.R. § 10.501.2(c) (2007). Appellant may submit the additional evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

² 5 U.S.C. §§ 8101-8193.

³ *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

⁴ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

⁵ *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to claimant's diagnosed condition. To be of probative value, the opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.⁷

ANALYSIS

The medical evidence submitted by appellant is insufficient to establish that he sustained an injury in the performance of duty. Therefore, he has failed to meet his burden of proof.

Appellant submitted absolutely no evidence, medical or factual, in support of his claim. He expressed his belief that his alleged glaucoma condition resulted from exposure to employment hazards, including chemical spills, asbestos fumes, fuel and gasses. However, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸ Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.⁹ Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the alleged work-related exposure is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to provide any medical reports. As there is no probative medical evidence addressing how his claimed condition was caused or aggravated by his employment, appellant has not met his burden of proof to establish that he sustained an occupational disease in the performance of duty causally related to factors of employment.

On appeal, appellant has submitted medical evidence, which he contends establishes that he developed glaucoma as a result of chemical exposures during the course of his federal employment. The Board's review of a case, however, is limited to the evidence in the case

⁶ *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

⁷ *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 4 at 218.

⁸ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*

record which was before the Office at the time of its final decision.¹⁰ Therefore, the Board cannot consider such evidence for the first time on appeal. Appellant may submit the additional evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the October 16, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 6, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ 20 C.F.R. § 10.501.2(c) (2007).